

testing, and that Mr. Loginow had no knowledge of any way Mr. Turro could have learned of the May 15, 1995 testing from the FCC. (TR 570-571) Mr. Loginow testified that, to the best of his knowledge, the only way that Mr. Turro could have known of the May 15, 1995 testing was by observing the effects of it in conjunction with a good guess that Mr. Loginow had been the person to perform the testing. (TR 571)

281. Mr. Loginow testified that he never observed the WMG-499 microwave receiver in operation at the Fort Lee translator because WMG-499 had been deactivated by the time he inspected on August 2, 1995.

282. In considering Mr. Turro's explanation of the effects of the May 15, 1995 testing, Mr. Loginow generally testified that the failsafe programming described by Mr. Turro was without merit, inconsistent with good engineering practice, highly problematic and not logical. (TR 559)

283. By engineering practice, Mr. Loginow testified that he meant his own experience and that he was not referring to published technical manuals or the FCC's Rules. (TR 559-560)

284. Mr. Loginow also testified that each of the elements of the failsafe arrangement described were technically possible: a microwave path may be subdivided into more than one channel, an audio and a data channel (TR 560-561), that the receiver and the remote control unit at the Fort Lee translator could be programmable (TR 561), and that the units could be programmed to home onto the audio path in the event that the data path was interrupted. (TR 562)

F Testimony of Mr. Luna concerning Jukebox Radio

285. Mr. Luna testified that while employed with Jukebox Radio, he had worked on technical matters with Mr. Turro, including, “transmitter functions, audio carriers, remote units, and other engineering matters.” (MMB14, p. 229) Mr. Luna testified that his knowledge included “how to raise and lower the power of the Monticello and the Fort Lee units, taking transmitter readings for both units, and maintaining EBS logs.” (Ibid.)

286. Specifically, Mr. Luna testified that he was able to adjust the power of the Monticello station transmitter remotely from the Dumont studio. (TR 717-718)

287. Mr. Luna subsequently amended his testimony to state that he was unsure whether he personally knew how to raise and lower power at the Fort Lee translator remotely because he was confused between “power” and “audio,” (TR 719-720) but that a person with knowledge could adjust the power remotely at the Fort Lee translator. (TR 721)

288. Mr. Luna testified that it was his understanding that the Jukebox Radio audio signal “was routinely” transmitted from the Dumont studio to the Fort Lee translator directly on WMG-499 and that if WMG-499 failed, then a “back-up telephone line” would engage automatically so that there would be no audio interruption to the Fort Lee translator. (MMB14, pp. 229-230)

289. Mr. Luna testified that he understood that the Fort Lee translator also received its programming off the air from the Monticello station, and later from the Pomona translator, some of the time. (TR 736-737)

290. Mr. Luna testified that when the Fort Lee translator received its programming off the air from the Monticello station, “it was frequently staticy and hashy.” (MMB14, p. 230) Mr.

Luna testified that interference from WBAI partially caused difficulty in receiving the Monticello station at the Fort Lee translator and that listeners complained of poor audio quality. (Ibid.)

291. Mr. Luna testified that the signal quality would vary depending on weather conditions, “particularly worsening in the winter.” (Ibid.) “Accordingly, we usually used the microwave link to deliver a far superior high-quality CD-like sound from Dumont directly to Fort Lee. (MMB14, p. 231)

292. Mr. Luna testified that reception of the Pomona translator improved the signal heard from the Fort Lee translator but that the signal still contained static and was “not comparable to the higher quality signal of other local stations.” (MMB14, p. 231)

293. Mr. Luna stated that he was able to determine how the stations were operating by listening to the sound quality and also by observing the TC-8 remote control unit in the Dumont studio. He testified that the TC-8 “had a series of settings with corresponding buttons and lights.” (MMB14, p. 231) Mr. Luna testified that when light No. 1 was lit it meant that the Fort Lee translator was retransmitting audio from the microwave. (TR 734)

When the unit was in the number 1 position and light 1 was lit, Jukebox Radio audio was being sent directly from Dumont to Fort Lee via the microwave link or back-up telephone lines. When the unit was in the number 5 position and the number 5 light was lit, the audio was being received over-the-air at Fort Lee from the Monticello/Pomona stations. The sound qualities that I heard in the various modes of operation also matched the position of the indicator lights as explained to me by Turro. (MMB14, p. 231)

294. Mr. Luna testified that there were times that the Monticello station was off the air but the Fort Lee translator continued to broadcast Jukebox Radio programming. (MMB14, p. 232) Mr. Luna testified that he knew that the Monticello station was off the air because of a strobe light in the Dumont studio. He also stated that there were times when he received calls

from listeners in Sullivan County saying that the Monticello station was off the air but the Fort Lee translator continued to transmit programming. (MMB14, p. 232)

295. Mr. Luna testified that on one occasion, he was driving in his car and listening to Jukebox Radio from the Fort Lee translator when Chuck Garland, the on air person at that time, dedicated three songs in a row to Mr. Luna. Mr. Luna testified that he found the dedications unusual and called Mr. Garland who, according to Mr. Luna, said that the Monticello station was off the air. Mr. Luna testified that he told Mr. Garland: “that must be impossible, as I was listening to the Jukebox Radio audio signal over the Fort Lee translator.” (MMB14, p. 232; TR 779)

296. Mr. Luna also testified to a “deception of the FCC” as follows:

In April of 1995, while Mr. Turro was out of town, Mr. Turro called into the Dumont studio. He instructed Mr. Luna to hold the telephone and go to the master audio control in the on-air studio. He had Mr. Luna station Mr. Gaghan at the remote control unit for the Fort Lee translator and he had Mr. Luna station Mr. Owen at the remote control unit for the Monticello station. While on the hand-held telephone with Mr. Turro, Mr. Luna was instructed to have Mr. Gaghan hold down the button on the Fort Lee translator remote control unit to ensure that it remained in position to receive the Pomona translator with light 5 lit while, at the same time, Mr. Owen was to shut down the Monticello station transmitter and Mr. Luna was to turn down the volume on the master control unit for the Jukebox Radio programming feed. Mr. Luna testified that the purpose of this incident was to “deceive the FCC inspector” into thinking that there was remote control of the Monticello station transmitter from the Dumont studio. Mr. Luna testified that the “deception” did not work because the Monticello station transmitter did not shut down,

and he knew it did not shut down because the strobe light did not flash. Mr. Luna did testify that the Fort Lee translator TC-8 kept the light No. 5 lit and that the volume of the program feed was turned down. (MMB14, pp. 233-234 and MMB14, pp.238-239; TR 765-768)

297. Mr. Luna testified that the “deception” took place on the same day that the FCC inspector was at the Monticello station. (TR 797-798)

G Admissions by Mr. Luna and rebuttal to his testimony

1) TC-8 units and the “deception”

298. Mr. Luna never visited either of the Monticello station, the Pomona translator or the Fort Lee translator, or otherwise observed the equipment in operation at any of those stations. (TR 726)

299. Mr. Luna testified that the remote control unit in the Dumont studio for control of the Monticello station was not a TC-8 but was something else. (TR 727-728)

300. Mr. Luna testified that he could push one button to turn off the Monticello station transmitter remotely. (TR 729; 731; 766-767)

301. Mr. Luna testified that the only explanation possible for differences in the sound quality of the Fort Lee translator perceived by him would have been whether the programming was delivered over WMG-499 or not. (TR 735)

302. In testifying that the Jukebox Radio audio worsened in the winter, Mr. Luna was comparing it to his observations of such audio in the summer. Mr. Luna left Jukebox radio by early June 1995 and was not there at all in July or August. (TR 737-738)

303. After being asked to assume that Mr. Turro and Mr. Hurst, an independent consulting engineer, had testified that it was technically impossible to adjust the power of either

the Monticello station transmitter or the Fort Lee translator transmitter remotely, Mr. Luna testified that he understood the term “lower” to be the same as “off” and that he understood the term “raise” to be the same as “on.” (TR 743-745; 746) Mr. Luna testified that his use of the terms “raise” and “lower” were different in reference to transmitters, as opposed to the control of volume, where “raise” and “lower” were understood by him to be more and less, but not on and off. (TR 747-748)

304. After being asked to assume that Mr. Turro and Mr. Hurst had testified that there never had been a remote meter reading function available in the Dumont studio for the Fort Lee translator, Mr. Luna testified that he agreed that power readings for the Fort Lee translator had not been available. (TR 750) He testified that he could not tell the wattage or the power output. (TR 755) Mr. Luna testified that looking at a status light on the TC-8 unit and noting whether it was on or off was what he meant by taking a “meter reading.” (TR 757)

305. Mr. Luna later testified that there was no status light on the TC-8 remote control unit for the Fort Lee translator which indicated whether the translator’s transmitter was turned on or off. (TR 770)

306. Mr. Gaghan testified that the Jukebox Radio staff did not take transmitter readings. (MMB15, p. 242; TR 1132)

307. As for the Monticello station, Mr. Luna testified that what he meant by taking transmitter readings was that he would note whether the remote control unit indicated if there was a problem with the tower lights where the Monticello station antenna was located. (TR 759-760)

308. In reference to the April 1995 "deception," Mr. Luna testified that the incident itself took place in a matter of seconds, with Mr. Turro actually on the telephone to the Dumont studio ten minutes or less. (TR 765)

309. Mr. Luna testified that the "deception" was the only time that he was on the telephone with Mr. Turro with Mr. Gaghan stationed at the Fort Lee translator remote control and Mr. Owen stationed at the Monticello station remote control. (TR 769)

310. Mr. Luna testified that he had no knowledge of an auxiliary transmitter at the Fort Lee translator. (TR 771)

311. Mr. Luna testified that he believed that light No. 5 on the TC-8 unit for the Fort Lee translator showed that the translator was receiving either the Monticello station or the Pomona translator and that there had not been a separate status light showing reception of the Monticello station. (TR 771-772)

2) August 9, 1995 statement

312. Mr. Luna wrote his August 9, 1995 statement (MMB14, pp. 238-239) at about the same time that he started working for Universal. (TR 773) Mr. Luna testified that at about the same time as Mr. Luna wrote his August 9, 1995 statement, Howard and Miriam Warshaw asked him if he would be willing to share information he had about Jukebox Radio with the FCC. (TR 774-775) Mr. Luna testified that Edith Zecca typed and notarized his August 9, 1995 statement (TR 775; MMB14, p. 239) and that at the time Ms. Zecca was employed at WVNJ as Mr. Warshaw's secretary. (TR 775)

313. Mr. Luna testified that Mr. Gaghan knew that he was writing his August 9, 1995 statement. (TR 775) At the same time, Mr. Luna testified that he was aware that Mr. Gaghan

was considering writing a statement too and that he had seen Mr. Gaghan's handwritten copy of the statement which became Mr. Gaghan's August 10, 1995 statement. (TR 776-777) Mr. Luna testified that he had discussed the "deception" incident with Mr. Gaghan. (TR 776)

314. Mr. Luna testified that he assisted Mr. Gaghan in correcting his memory with respect to the sketch of the TC-8 unit on the first page of Mr. Gaghan's August 10, 1995 statement. (TR 777)

315. Mr. Luna testified that Mr. Gaghan's August 10, 1995 statement discussed the same "deception" incident as his own August 9, 1995 statement. (TR 777)

3) Testimony of Mr. Garland

316. In connection with his testimony about Mr. Garland, Mr. Luna testified that he was not able to listen to the Fort Lee translator and determine whether it was receiving programming from WMG-499 or from the Pomona translator "all of the time," but he could "most of the time." (TR 781)

317. Mr. Luna amended his testimony by stating that he had told Mr. Garland that it was impossible for the Monticello station to be off the air, not because he was hearing programming from the Fort Lee translator, but because when he had left the studio conditions had been "fine." (TR 779-781)

318. Mr. Garland testified that he had no recollection of the incident involving him to which Mr. Luna testified. Mr. Garland further testified that if such an incident had taken place, he would have remembered it. (T6)

319. Mr. Garland testified that he did remember a time when there was an outage at the Monticello station, and that the Fort Lee translator discontinued broadcast of Jukebox Radio, because of a cable break of New York Telephone. (Ibid.)

320. Mr. Garland testified that he recalled no circumstances when the Monticello station was off the air and the Fort Lee translator was on the air. (Ibid.)

4) Lack of experience and bias

321. Mr. Luna testified that his position with Jukebox Radio was his first paid employment in radio. (TR 722-723) Mr. Luna testified that prior to coming to Jukebox Radio, his highest attainment in education had been a high school diploma and a survey course at the Center for Media Arts which met two or three days a week for about ten months. (TR 723-724) The course was not about technical matters. (TR 724)

322. Mr. Luna testified that he was bitter about his experience at Jukebox Radio. (TR 786)

H Testimony of Mr. Gaghan about Jukebox Radio

323. Mr. Gaghan testified that he was able to tell from the indicator lights on a TC-8 unit that the Fort Lee translator was receiving programming directly from the Dumont studio. (MMB15, p. 240)

When the unit was in the number 1 position and light number 1 was lit, Jukebox Radio audio was being sent directly from Dumont to the Fort Lee via the microwave link or back-up telephone lines. When the unit was in the number 5 position and the number 5 light was lit, the audio was being received over-the-air at Fort Lee from either the Monticello or the Pomona station. (MMB15, p. 241)

324. Mr. Gaghan testified that he was able to hear the difference between the audio sources for the Fort Lee translator, with better sound quality resulting from use of the microwave

and reduced sound quality when the Fort Lee translator rebroadcast the signal of either the Monticello station or the Pomona translator. (MMB15, p. 241)

325. Mr. Gaghan testified that:

Gerry Turro not only instructed me on how to use this equipment, but also instructed me that if someone from the FCC ever came around, the Fort Lee TC-8 remote control unit was to be set in the number 5 position. I knew that the Fort Lee translator was required to primarily rebroadcast the signal of the Monticello or Pomona stations. I also knew that Turro did not want the TC-8 remote control unit set in the usual number 1 position if the FCC was around. Therefore, I was able to determine — and it was only common sense — that the number 5 position on the remote control unit indicated that the Fort Lee translator was receiving the over-the-air signal of either the Monticello or the Pomona stations. (MMB15, p. 241)

326. Mr. Gaghan testified that he knew of “a number of occasions” when the Monticello station was off the air while the Fort Lee translator continued to broadcast Jukebox Radio programming. (MMB15, p. 242) He testified that Joe Molito and Dan Ventola, at different times, had called the Dumont studio and said that the Monticello station was not being heard in Sullivan County while the Jukebox Radio programming was being transmitted from the Fort Lee translator. Mr. Gaghan testified that between four to six additional, similar calls were received. (MMB15, pp. 242-243)

327. Mr. Gaghan testified that he participated in a “deception” of an FCC inspector in the same way as described by Mr. Luna. (MMB15, pp. 243-244; MMB15, pp. 248-249)

328. Mr. Gaghan stated that the “deception” took place the day after the FCC inspector had been in Monticello. (MMB15, p. 243)

I Admissions by Mr. Gaghan and rebuttal to his testimony

1) Lack of understanding of technical matters and bias

329. Mr. Gaghan testified that he is not well versed in the technical aspects of radio. (TR 1091)

330. Mr. Gaghan testified that when Jukebox Radio programming was sent from the Dumont studio to the Monticello station it was carried by telephone line or microwave dish. (TR 1092) Mr. Gaghan testified that there was a big microwave dish, eight to twelve feet in diameter, mounted on the roof next door to the Dumont studio which sent the programming from the Dumont studio to the Monticello station. (TR 1093-1094)

331. Mr. Gaghan testified that he had never visited either of the Monticello station, the Pomona translator or the Fort Lee translator, nor had he ever seen the facilities which made them operate. (TR 1096)

332. Mr. Gaghan testified that he had no knowledge of whether the TC-8 unit in the Dumont studio had an indicator light to indicate status the Fort Lee translator transmitter. (TR 1120-1121)

333. Concerning the TC-8 unit for remote control of the Fort Lee translator, Mr. Gaghan testified that he had no memory of any windows or digital readouts of numbers. He only remembered the status lights and the button used to switch back and forth. He clarified his testimony to state that there was no difference in his understanding between “the number one light” and the “number one position.” Mr. Gaghan testified that to him those terms were the same thing. (TR 1121-1123)

334. Mr. Gaghan again amended his testimony to state that in his understanding the “number 5 light” and the “number 5 position” were the same thing. (TR 1125)

335. Mr. Gaghan again amended his earlier testimony by deleting the words “either the Monticello” from “either the Monticello or the Pomona stations” on MMB15, p. 241. (TR 1126-1127)

336. Mr. Gaghan again amended his earlier testimony and deleted the words “or Monticello station” from “rebroadcast the signal of the Pomona or Monticello station” on MMB15, p. 241. (TR 1128)

337. Mr. Gaghan again amended his earlier testimony and deleted the words “either the Monticello or” from “over-the-air signal of either the Monticello or the Pomona stations” on MMB15, p. 24. (TR 1131)

338. Mr. Gaghan testified that he did not know whether or not the Fort Lee translator could receive the Monticello station directly off the air. (TR 1129)

339. Mr. Turro testified that T29 is a photograph of a dish antenna, ten to twelve feet in diameter, located on the building adjacent to the Dumont studio. It is the only dish of its size that has ever been on or near the Dumont studio. Mr. Turro testified that the dish antenna shown in T29 is, and always has been, a receive-only antenna, used by Jukebox Radio to receive network audio from ABC. (TR 1654-1655)

340. Mr. Gaghan testified that he felt animosity toward Mr. Turro and that he had threatened Mr. Turro publically in a restaurant in 1996, testimony which was confirmed by Mr. Lynch and by Mr. Owen. (TR 1097-1098; T4, p. 3; T5, p. 4; see also T8 and TR 1099-1100)

341. Mr. Owen testified:

It has been my observation over the course of two to three years that William Gaghan has a great personal animosity toward Mr. Turro. Even while working at Jukebox Radio, Mr.

Gaghan regularly expressed his dislike of Mr. Turro and tried to antagonize him. Mr. Turro always remained calm and never retaliated against Mr. Gaghan. (T4, p. 3)

2) Testimony about the Monticello station being off the air

342. Mr. Gaghan testified that some of the incidents he testified about when persons, including Joe Molito, called the Dumont studio and said that they could not hear “Jukebox” on the air, even though Mr. Gaghan could hear the Fort Lee translator, may have occurred before the Monticello station went into operation in October 1994. (TR 1134-1135)

343. Mr. Gaghan again amended his earlier testimony to state that the total number of incidents when someone called into the Dumont studio to say that the Monticello station was off the air but Mr. Gaghan could hear the Fort Lee translator was two or three times. (TR 1137)

3) Testimony about the “deception”

344. Mr. Gaghan again amended his earlier testimony concerning the “deception” by stating that when he testified that during the “deception” he held “down the number five button” on the TC-8 remote control unit (MMB15, p. 244), that such testimony was wrong because there was no such button, he had held the “arrow up and arrow down.” (TR 1150.)

345. Mr. Gaghan also testified that his function in the “deception” was to hold down the raise or lower button on the TC-8 unit for the Fort Lee translator to ensure that light No. 5 stayed lit so that the “over-the air signal” would continue to go to the Monticello station. (MMB15, p. 244; TR 1151-1153)

346. In connection with the “deception,” Mr. Gaghan testified that he understood that the Monticello station transmitter did not shut down because Mr. Luna told him that. Mr. Gaghan

had no independent way to determine whether or not the Monticello station transmitter shut down. (TR 1153-1154)

347. Mr. Gaghan testified that the purpose of the “deception” was to make the FCC inspector think that the Dumont studio had remote control of the Monticello station transmitter. (TR 1154-1155)

4) August 10, 1995 statement

348. Mr. Gaghan testified that Ms. Zecca, Mr. Warshaw’s secretary at WVNJ at the time, typed and notarized his August 10, 1995 statement. (TR 1156-1157) Mr. Gaghan stated that he handwrote the August 10, 1996 statement and that Ms. Zecca typed it. (TR 1157-1158)

349. Mr. Gaghan stated that the substance of the August 10, 1995 statement was entirely his own, (TR 1157-1158) with words completely his own. (TR 1159)

350. Although WVNJ general manager Ron Lustberg had at some point asked if Mr. Gaghan would be willing to give a deposition (TR 1158), Mr. Gaghan testified that no one suggested any part of the contents of his August 10, 1995 statement and no one helped him with his August 10, 1995 statement. (TR 1159) Mr. Gaghan testified specifically that neither Mr. Warshaw nor Mr. Luna asked him to write a statement. (TR 159) He also stated that Mr. Lustberg did not ask him to write the August 10, 1995 statement. (TR 1179-1180)

351. Mr. Gaghan testified that, at the time he was writing it, he did not discuss the contents of his August 10, 1995 statement with Mr. Luna. (TR 1160) Mr. Gaghan also testified that Mr. Luna did not help with any of the meaning or any of the knowledge in the August 10, 1995 statement, including the sketch of the TC-8 unit on the first page. (TR 1160)

352. Mr. Gaghan testified that he tried to keep it secret that he wrote the August 10, 1995 statement. (TR 1160)

353. Mr. Gaghan testified that at the time he was writing his August 10, 1995 statement, he had no knowledge that Mr. Luna was writing a statement, or had written a statement, nor did Mr. Gaghan have any knowledge of the contents of Mr. Luna's statement. (TR 1161)

354. Mr. Gaghan stated that it was just a coincidence that Mr. Luna wrote a statement on August 9, 1995 and that he wrote a statement on August 10, 1995. (TR 1161) Mr. Gaghan also testified that the production of the two statements were completely independent from each other even though they discuss the same incident. (TR 1162)

355. Mr. Gaghan testified that he had no memory that Mr. Warshaw asked him to write a statement (TR 1163) and Mr. Gaghan stated that Mr. Warshaw did not ask him to include certain matters in his statement. (TR 1164-1165)

356. Mr. Gaghan also testified that Mr. Luna would be wrong if he said that he helped Mr. Gaghan write the August 10, 1995 statement and that, specifically, Mr. Luna did not assist him with the TC-8 sketch. (TR 1181-1182)

357. Mr. Warshaw testified that he asked Mr. Gaghan to write a statement, and the statement he asked Mr. Gaghan to write resulted in the August 10, 1995 statement. (TR 1061-1062)

358. Mr. Warshaw testified that he asked Mr. Gaghan to include two matters in his August 10, 1995 statement, the language about "under penalty of perjury" and "this thing about using two different wires." (TR 1062)

359. Mr. Warshaw testified that he asked Mr. Gaghan to ask Mr. Luna to write a statement, and to the best of Mr. Warshaw's understanding, his request resulted in Mr. Luna writing the August 9, 1995 statement. (TR 1062-1063)

360. Mr. Warshaw also testified that Mr. Luna and Mr. Gaghan wrote their respective statements at approximately the same time and that he believed that Mr. Luna was aware or knew that Mr. Gaghan was writing a statement. (TR 1063)

361. Mr. Warshaw testified that he made the services of his secretary available to Mr. Luna and Mr. Gaghan to assist them in typing and notarizing their statements. (TR 1064)

362. Mr. Warshaw testified that after each of Mr. Luna's August 9, 1995 statement and Mr. Gaghan's August 10, 1995 statement were signed, the originals of each statement were put under Mr. Warshaw's control. (TR 1064-1065)

363. Mr. Warshaw testified that shortly after taking control of Mr. Luna's original statement and Mr. Gaghan's original statement, he forwarded them to his counsel for use against Jukebox Radio. (TR 1065)

364. Mr. Warshaw testified that, to his knowledge, Mr. Luna and Mr. Gaghan understood that he planned to use their statements in proceeding against Mr. Turro before the FCC. (TR 1065)

J Joint rebuttal to Mr. Luna and Mr. Gaghan

365. Mr. Turro testified that the perceived audio quality heard from the Fort Lee translator may be different when it receives its signal from the Pomona translator as compared to the Monticello station because of different audio processing equipment. (T1, p. 9)

366. Mr. Turro testified that he has never attempted to deceive an FCC inspector, either by his own actions or by asking someone else to act deceptively. (T1, p. 14)

367. Mr. Turro testified that the “deception,” as Mr. Luna and Mr. Gaghan described it, could not have deceived Mr. Loginow because turning down the volume on the Jukebox Radio program feed would have produced silence while Mr. Loginow stated that he heard “white noise” on April 14, 1995, when he tested the stations. (T1, p. 15)

368. Mr. Loginow testified that he did not test or inspect the Dumont studio remote control equipment for the Monticello station. (MMB18, p. 333; TR 348)

369. In connection with the “deception,” Mr. Turro testified that Mr. Spicka was using the only telephone line at the Monticello station transmission site to talk to Mr. Loginow, so he could not have been talking to Mr. Turro or to anyone else. (T1, p. 16)

370. In connection with the “deception,” while Mr. Spicka and Mr. Loginow talked on that telephone, remote control by telephone could not have been used because the only telephone line to the transmitter site was tied up. (T1, p. 16)

371. In connection with the “deception,” Mr. Turro testified that if he had been on the telephone with Mr. Luna, as he suggests, then he could not have been on the telephone with Mr. Spicka simultaneously. (T1, p. 16)

372. In connection with the “deception,” Mr. Turro testified that the remote control equipment in the Dumont studio would usually take anywhere from about fifteen seconds to as much as two minutes to execute a shut down at the Monticello station transmitter, which is typical of such facilities. Therefore, it was not possible to have shut down the Monticello station transmitter by remote control exactly on command when Mr. Loginow said “kill it.” (T1, p. 16)

373. In connection with the “deception,” Mr. Turro testified that he had no way of knowing what Mr. Loginow was doing some 2,000 miles away in Bergen County. (T1, p. 16)

374. In connection with the “deception,” Mr. Turro testified that presumably Mr. Luna and Mr. Gaghan had no way of knowing of Mr. Loginow’s actions. Mr. Loginow has testified that he had no communications with Mr. Luna and Mr. Gaghan and the two of them have not even indicated that they had knowledge of Mr. Loginow’s location or activities. (T1, p. 16)

375. In connection with the “deception,” Mr. Turro testified that he designed the remote control system so that two buttons had to be pushed to shut down the Monticello station transmitter, not one button, to avoid accidental shut downs. Mr. Luna has testified that the Monticello transmitter was shut down by pushing one button on the control unit in the Dumont studio. (T1, p. 16)

376. Mr. Owen has testified that he took no part in the “deception,” that such actions by him would be have been so unusual that he would remember them, but he does not. (T4, p. 2) Mr. Luna testified that the “deception” was the only time that he was on the telephone with Mr. Turro with Mr. Gaghan stationed at the Fort Lee translator remote control and Mr. Owen stationed at the Monticello station remote control. (TR 769)

377. Mr. Turro testified that the Monticello station has operated at reduced power on more than one occasion, for example the period of time in April of 1995 when lightning had damaged the Monticello station antenna or when ice had built up on the antenna. (T1, p. 21) Mr. Turro testified that under conditions of reduced transmission power, the Pomona translator would continue to receive a signal from the Monticello station when many other receivers would not be able to receive the Monticello station. (T1, p. 21)

378. To confirm that testimony, Mr. Hurst testified that he tested the ability of the Pomona translator to receive the Monticello station when it operated at reduced power. Mr. Hurst testified that, based upon actual testing, he was able to determine on October 17, 1997, that the Pomona translator remained able to receive the Monticello station even when its transmitter was operating at levels below 100 watts. (T2, pp. 4-5)

IV FINDINGS ON THE TRANSFER OF CONTROL ISSUE

379. Mr. Turro testified that he did not personally build the Monticello station facilities nor did he or Jukebox Radio pay for any of the costs of constructing the Monticello station or any of its facilities. (T1, p. 6) He testified that he supervised construction but that Mr. Weis and his own employees actually constructed it. (TR 1793)

380. Mr. Turro testified that he acted as the chief operator for the Monticello station for the first several months of its existence but that he was never paid for so acting and that he spent very little time in that undertaking. (T1, p. 7)

381. Mr. Turro testified that he only remembers having some general discussions about the operations of the Monticello station in his capacity as “chief operator” and briefly providing some assistance in supervising construction. (T1, p. 7)

382. Mr. Turro testified that Mr. Weis replaced him with another chief operator in the spring or early summer of 1995 and that he has not acted in that capacity or held that title since. (Ibid.)

383. Mr. Turro testified that he has never held any control over the operations of the Monticello station or over MMBI and that he has never held any financial control or responsibility of any kind for the Monticello station or MMBI. Mr. Turro further testified that in

the event that he ever needed anything in connection with the Monticello station on behalf of the Jukebox Radio Network, he would look to Mr. Weis, Mr. Blabey or Ms. Montana. (Ibid.)

384. The Network Affiliation Agreement between Jukebox Radio and MMBI governs the provision of programming by Jukebox Radio to MMBI for broadcast by the Monticello station. (MMB8, pp. 137-141)

385. Mr. Turro relies upon the proposed findings of MMBI for all additional proposed findings in connection with the transfer of control issue.

V FINDINGS ON THE CANDOR ISSUES

386. Years in advance of seeking to enter into the arrangement with MMBI at issue in this proceeding, Mr. Turro sought and received, in writing, a declaratory ruling from the Commission on the subject in the form of the November 19, 1991 letter from Mr. Stewart. (T1, pp. 2-3; MMB1, pp. 8-9)

387. Mr. Turro testified that he discussed with Mr. Weis an arrangement consistent with the one Mr. Stewart of the Bureau had stated in the November 19, 1991 letter would be permissible under the FCC's Rules. (T1, p. 4)

388. Mr. Turro testified that the Network Affiliation Agreement Jukebox Radio entered into with MMBI was an accurate reflection of the November 19, 1991 declaratory ruling. (TR 1786; 1789)

389. With respect to the period of time in which he acted as chief operator for the Monticello station without pay, Mr. Turro testified that he understood that the FCC's Rules stated that a primary station could provide technical support to an FM translator so he reasoned

“it should be able to go the other way” and the licensee of an FM translator should be permitted to provide technical support to a primary station. (TR 1790-1791)

390. Mr. Turro also testified that he relied on the advice of counsel that the Network Affiliation Agreement with MMBI was an accurate reflection of the November 19, 1991 declaratory ruling. (TR 1787-1788)

391. Mr. Turro testified that he never tried to deceive the FCC in connection with his request for a declaratory ruling in 1991 and that he never tried to conceal important facts from the FCC. (TR 2112)

392. In applying for the intercity relay station which was granted and given the call sign WMG-499, Mr. Turro expressly represented that the station would be used to feed 30-second spot announcements and operational communications from the Dumont studio to the Fort Lee translator. (MMB9, pp. 146-153)

393. Mr. Turro testified that at no time did he ever seek to deceive the FCC, in any way, by fabricating or simulating the appearance that the Fort Lee translator was receiving Jukebox Radio programming from the off the air signal of the Monticello station. (TR 2108)

394. Mr. Turro cooperated fully with Mr. Loginow when Mr. Loginow asked to inspect the Fort Lee and Pomona translators. (TR 387; T27, p. 3; TR 395; T27, p. 3)

395. Mr. Turro’s response to the letter of inquiry of Mr. Goldstein, dated July 27, 1995, including the attachments thereto (MMB8), accurately represented the material facts of the operations of Jukebox Radio.

VI PROPOSED CONCLUSIONS

A Introduction

396. This proceeding generally concerns the lawfulness of the actions of Mr. Turro and MMBI under an arrangement between them by which Mr. Turro's program service known as Jukebox Radio makes available to MMBI, for broadcast on the Monticello station, programming at all times, and Mr. Turro's Fort Lee and Pomona translators retransmit that programming. (PF 16-17) The Network Affiliation Agreement is the document under which Mr. Turro and MMBI have operated this arrangement. (PF 5; 384)

397. With respect to Mr. Turro, the issues include questions of compliance with technical provisions of the Commission's Rules, whether Mr. Turro participated in an illegal transfer of control of the Monticello station, and whether he lacked candor or misrepresented to the Commission facts material to his operation of the translators. (PF 16-17)

398. The essence of the technical compliance issue relating to the translators is whether the operation of the Fort Lee translator and the Pomona translator complied with Section 74.1231 of the Commission's Rules by receiving Jukebox Radio programming off the air either from the Monticello station or, in the case of the Fort Lee translator, from the Pomona translator, or whether they violated the Rule by obtaining that programming from intercity relay station WMG-499. The essence of the technical compliance issue relating to WMG-499 is whether its operation materially violated Section 74.531 of the Rules, allegedly by being used as a facility to furnish the Jukebox Radio programming directly from the Dumont studio to the Fort Lee translator. There also may be secondary questions of whether WMG-499 was used properly when it furnished a data channel for operational communications from the Dumont studio to the

Fort Lee translator, and when it was used to furnish 30 second per hour announcements or emergency messages to the Fort Lee translator, if it was so used. (PF 16-17)

399. The transfer of control issue designated against Mr. Turro questions whether he took illegal *de facto* control of the Monticello station within the meaning of Section 310(d) of the Communications Act and Section 73.3540(a) of the Commission's Rules, essentially by buying the air time of the Monticello station under the Network Affiliation Agreement, making the Jukebox Radio programming available to the Monticello station on a full time basis under that agreement (PF 5), and by acting as chief operator for the station, without pay, for the first several months of its operations. (PF 380)

400. The candor/misrepresentation issue against Mr. Turro questions whether he failed to properly disclose, or affirmatively misrepresented, material facts to the Commission concerning the operations of the Fort Lee and Pomona translators. (PF 16-17)

401. In the light of the determinations made under these issues, the ultimate issue is whether it would serve the public interest to grant the applications for renewal of the licenses of the Fort Lee and the Pomona translators. (PF 16-17)

B The technical compliance issues

1) Section 74.1231

402. Section 74.1231(b) requires that commercial FM translators, such as the Fort Lee and Pomona translators, receive their programming "directly through space." The Commission has made it clear that "directly through space" means retransmission through receipt of the actual over the air signal of the station being retransmitted. (See Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 8 FCC Rcd 5093, 5093 (1993);

Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC

Rcd 7212, 7220-7221 (1990)) In his expert opinion, Mr. Hurst confirms that "received directly through space" under Section 74.1231 of the Commission's Rules means "off-air-pickup," which differentiates from what he describes as "intermediate means of feeding the program material, such as satellite, microwave or wireline" facilities. (PF 153, quoting T2, p. 4)

2) The record of actual experience

403. The evidence is clear that from the time that the Monticello station went into operation, transmitting on 99.7 MHz, the Fort Lee translator had the capability to receive the Monticello station signal "directly through space" under Section 74.1231(b). (PF 104-378)

404. Mr. Turro has testified, and it is undisputed, that prior to the time that the Monticello station went on the air he decided, based upon testing on the roof of the Mediterranean Towers, that the Monticello station could be received off the air by the Fort Lee translator. He did so by "sweeping" the roof of the Mediterranean Towers with a battery powered Sony receiver and a hand-held antenna and detecting signals from FM stations with weaker signals than the one anticipated from the Monticello station, and stereo rather than mono signals, but otherwise transmitting from the same general direction, one of which transmitted on a first adjacent channel to WBAI. (PF 110) Mr. Turro testified that from the time that the Monticello station went on the air in October 1994 until the Pomona translator began retransmitting the Monticello station in January 1995, the Fort Lee translator received Jukebox Radio programming solely by means of direct off the air reception of the signal of the Monticello station; that Mr. Turro monitored the quality of the Fort Lee translator transmissions at least daily during this period; and that he thereby determined that the signal quality was acceptable at

all times, although it was necessary to make adjustments to the filtering system about once a month in order to improve the quality of reception. (PF 90-91) Mr. Turro testified that after the Pomona translator started to rebroadcast the Monticello station, he used that signal to provide the Jukebox Radio programming to the Fort Lee translator on a regular basis (Ibid.), although reception of the direct Monticello station to Fort Lee translator path remained possible throughout the entire period considered in the record. (PF 108-109) Mr. Turro testified that WMG-499 was not used to deliver Jukebox Radio programming to the Fort Lee translator. (PF 240) Mr. Turro was a well informed, reliable and credible witness (PF 141; C 493-500), and his testimony, unless successfully controverted on the record, is to be accepted. As indicated below, the preponderance of the other evidence in the record supports Mr. Turro's testimony.

405. As early as July 6, 1995, Mr. Hurst independently observed that the Monticello station could be received from the roof of the Mediterranean Towers and he so informed the Commission in a statement dated July 25, 1995 which was part of Mr. Turro's response to Mr. Goldstein of the Bureau dated July 27, 1995. (PF 11; 143-146)

406. Mr. Loginow, the Commission's own field engineer, confirmed that the Monticello station could be received off the air by the Fort Lee translator by hearing it himself during his August 2, 1995 inspections. He reported back to the Commission in his August 4, 1995 e-mail message that "while at Fort Lee, Turro demonstrated the ability to receive moderately good audio directly from WJUX Monticello (99.7 MHz)." (PF 126)

407. During their testing in October of 1997, Mr. Hurst and Mr. Hidle further demonstrated that the Fort Lee translator is capable of receiving a signal from the Monticello station sufficient for rebroadcast. Their demonstration included their own observations, actual